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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights in the administration of justice

Report of the Secretary-General*

Summary

In its resolution 69/172 on human rights in the administration of justice, the General Assembly requested the Secretary-General to submit to the Assembly at its seventy-first session a report on the latest developments, challenges and good practices in human rights in the administration of justice and on the activities undertaken by the United Nations system as a whole.

* The present report was submitted after the deadline to accurately reflect the most recent information received from Member States.

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I. Introduction

1. In its resolution 69/172 on human rights in the administration of justice, the General Assembly requested the Secretary-General to submit to the Assembly at its seventy-first session a report on the latest developments, challenges and good practices in human rights in the administration of justice and on the activities undertaken by the United Nations system as a whole.

2. Issues relating to the death penalty and transitional justice are intimately related to human rights in the administration of justice but are not addressed in detail in the present report because they are covered in specific reports on these topics[1] to the Human Rights Council or the General Assembly.

II. Challenges in human rights in the administration of justice and related recent developments

3. Following the request of the General Assembly in its resolution 67/166, the most recent report of the Secretary-General on human rights in the administration of justice (A/68/261) was focused on an analysis of the international legal framework for the protection of all persons deprived of their liberty. The most recent report of the Secretary-General providing a general update on developments in relation to human rights in the administration of justice was submitted at the sixty-seventh session of the Assembly, in 2012 (A/67/260). Outlined in the present section are some of the main human rights challenges in the administration of justice and the relevant recent developments since the issuance of the report of 2012.

A. Access to justice

Access to justice and the protection rights

4. International human rights law recognizes a clear right to an effective remedy for persons whose rights or freedoms have been violated.[2] During the reporting period, several human rights bodies highlighted the important role of access to justice in the legal protection of human rights in general, but also focusing on protection from specific violations. Human rights mechanisms also provided guidance on the interpretation and implementation of access to justice.

5. In 2012, the Committee against Torture adopted its general comment No. 3 (2012) on the implementation of article 14 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment by States parties (CAT/C/GC/3). The Committee clarifies therein the content and scope of obligations under article 14 of the Convention, which ensures access to the legal system for victims of torture and provides for an enforceable right to fair and adequate compensation. According to the general comment, the term "redress" in article 14

[1] See, for example, A/HRC/27/21 and the report pursuant to General Assembly resolution 69/186 (A/71/332).

[2] See, for example, article 2, paragraph 3, of the International Covenant on Civil and Political Rights and article 8 of the Universal Declaration of Human Rights.

encompasses the concepts of "effective remedy" and "reparation". The Committee also sets out therein the procedural obligations required to adequately implement the right to redress, in particular access for victims to effective mechanisms for complaints and investigations.

6. In 2014, the Human Rights Committee adopted general comment No. 35 (2014) on liberty and security of person (article 9 of the International Covenant on Civil and Political Rights) (CCPR/C/GC/35), in which, among other things, it sets out how access to justice can ensure protection from arbitrary detention. It details the obligations of States in relation to the judicial control of detention, in particular the meaning of the right to be promptly brought before a judge, the entitlement to trial within a reasonable time and limitations to pretrial detention. The Committee also provides guidance on how to implement the right of persons deprived of their liberty to take proceedings for release from unlawful detention.

7. In its general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families (CMW/C/GC/2), the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families identifies limited access to justice as a factor making such persons more vulnerable to labour and other types of exploitation and abuse. The Committee recommends therein that States conclude bilateral agreements to ensure that migrant workers who return to their State of origin may have access to justice in the State of employment in labour-related cases involving complaints of abuse or claims of unpaid wages and benefits.

8. In 2016, the Committee on Economic, Social and Cultural Rights adopted its general comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights) (E/C.12/GC/23), in which it acknowledges the importance of access to justice, including through the availability of free legal aid to ensure just and favourable working conditions.

Access to justice for specific groups

9. In 2014, the Committee on the Rights of Persons with Disabilities adopted general comment No. 1 (2014) on equal recognition before the law (article 12 of the Convention on the Rights of Persons with Disabilities) (CRPD/C/GC/1), in which it underscores that every human being possesses legal personality and that recognition of legal capacity is inextricably linked to the enjoyment of many other human rights, such as the right to access to justice and the right to be free from involuntary detention, including in a mental health facility.

10. On 11 April 2014, the Committee adopted its general comment No. 2 (2014) on accessibility (article 9 of the Convention on the Rights of Persons with Disabilities) (CRPD/C/GC/2), addressing the issue of accessibility as a precondition for ensuring administration of justice in relation to persons with disabilities. The Committee states therein that there can be no effective access to justice for persons with disabilities if the buildings of law enforcement and the judiciary are not physically accessible, or if the services, information and communication that they provide are inaccessible.

11. In its general comment No. 2, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families also recognizes that migrant workers in irregular situations generally live in fear of being reported to the immigration authorities, which severely limits their access to justice, making such persons more vulnerable to labour and other types of exploitation and abuse.

12. In 2013, the Committee on the Rights of the Child adopted its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights (CRC/C/GC/16), in which it makes several recommendations highly relevant to the administration of justice. The Committee provides that States should work to remove social, economic and juridical barriers to ensure that children have access to effective judicial mechanisms without discrimination. In particular, children and their representatives should be provided with information about remedies through various means, such as school curricula, youth centres and community-based programmes. The Special Rapporteur on the independence of judges and lawyers has also recently addressed issues relating to children's rights in the justice system (see A/HRC/29/26 and Corr.1).

13. In 2014, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child adopted joint general recommendation No. 31/general comment No. 18 on harmful practices (2014) (CEDAW/C/GC/31-CRC/C/GC/18), in which issues relating to the administration of justice are addressed. The Committees note that access to justice for victims of harmful practices is denied or limited owing to prejudices and weak capacity to address the rights of women and children among judges in customary and religious courts or traditional adjudication mechanisms, and the belief that matters falling within the purview of such customary systems should not be subjected to review or scrutiny by the State or other judicial bodies. Victims seeking justice often face stigmatization, a risk of revictimization, harassment and possible retribution, and steps must be taken to protect the rights of women and girls throughout the legal process.

14. In 2015, the Committee on the Elimination of Discrimination against Women adopted its general recommendation No. 33 (2015) on women's access to justice (CEDAW/C/GC/33). The Committee highlights various factors that make it more difficult for women to gain access to justice, including trafficking, armed conflict, status as an asylum seeker, migration, the criminalization of prostitution and geographical remoteness. The Committee highlights six interrelated and essential components to ensure access to justice: justiciability, availability, accessibility, good quality, provision of remedies for victims and accountability of justice systems.

15. During the reporting period, the Committee also made other detailed recommendations regarding women's access to justice. In its general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations (CEDAW/C/GC/30), the Committee cautions that barriers faced by women in gaining access to justice before national courts before conflict are exacerbated during conflict and persist in the post-conflict period. The Committee also recommends that gender-sensitive investigative procedures be used to address gender-based violence. It recommends the enhancement of women's access to justice, including through the provision of legal aid and the establishment of specialized courts, such as domestic violence and family courts, and by providing

mobile courts for camps, settlements and remote areas, and also recommends that protection for victims and witnesses be ensured.

16. In 2016, the Committee adopted its general recommendation No. 34 (2016) on the rights of rural women (CEDAW/C/GC/34), in which the need to ensure physical access to courts and other justice systems, especially for rural women, is highlighted, as are other major issues hindering rural women's access to justice, such as a lack of information and sociocultural constraints.

17. In June 2014, the Special Rapporteur on trafficking in persons, especially women and children, presented the basic principles on the right to an effective remedy for victims of trafficking in persons (see A/HRC/26/18, annex). In the thematic report for 2016 to the Human Rights Council (A/HRC/32/41), the Special Rapporteur addressed trafficking in persons in conflict and post-conflict situations and focused on protecting victims of trafficking and people at risk of trafficking, especially women and children, highlighting the importance of access to justice and the need to prosecute all forms of trafficking.

18. In 2015, the Special Rapporteur on minority issues submitted her annual report to the General Assembly (A/70/212), in which she focused on minorities in the criminal justice system, including as victims and witnesses. In particular, she considered obstacles to access to justice faced by minority victims of crime. The Special Rapporteur has also been requested by the Human Rights Council (resolutions 6/15 and 19/23) to guide the work of the Forum on Minority Issues, prepare its annual meetings and report on the recommendations of the Forum. The eighth session of the Forum, held in Geneva on 24 and 25 November 2015, was focused on the theme "Minorities in the criminal justice system". In 2016, the Special Rapporteur submitted the recommendations produced by the Forum, including some relating to access to justice for minorities, to the Council (see A/HRC/31/72).

B. Legal aid

19. During the reporting period, several human rights treaty bodies and special procedures mandate holders continued to work on the question of access to legal aid, as a component of the right to access to justice for victims, as well as the right to a lawyer in the criminal justice system. The thematic report of the Special Rapporteur on the independence of judges and lawyers for 2013 (A/HRC/23/43 and Corr.1) was focused on the issue of legal aid, including the applicable normative framework. Several recommendations for the implementation of a legal aid system were formulated. The Committee on the Rights of the Child stated in its general comment No. 16 that children should be allowed to initiate proceedings and have access to legal aid and the support of lawyers in bringing cases against business enterprises.

20. The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems were adopted by the General Assembly on 20 December 2012 (see resolution 67/187, annex). The Principles include the recognition of legal aid as an essential component of the criminal justice systems and related responsibilities of States; equity and non-discrimination in the provision of legal aid; independence and protection of legal aid providers; and the competency and accountability of legal aid providers. The Guidelines cover a wide range of issues,

including the right to be informed of legal aid, legal aid at the pretrial stage, during court proceedings and at the post-trial stage, the implementation and funding of a nationwide legal aid programme and practical issues such as the recourse to paralegals and partnerships with non-State legal aid service providers and universities.

C. Rights of persons deprived of their liberty

21. The protection of the rights of persons deprived of their liberty remains a particular challenge for respect for human rights in the administration of justice. While a comprehensive legal framework exists, the main challenges lie with the effective implementation of the norms and standards at the national level (see A/68/261). To assist States in this endeavour, human rights mechanisms worked on this issue throughout the reporting period.

22. In November 2012, the Working Group on Arbitrary Detention adopted its deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law (see A/HRC/22/44, sect. III). In its annual report for 2013, the Working Group touched upon issues relating to military justice, overincarceration and protective custody (A/HRC/27/48). The Working Group addressed in its annual report for 2014 (A/HRC/30/36), among other things, the thematic issues of drug policies and arbitrary detention, peaceful protests and arbitrary detention and remedies for arbitrary detention.

23. In its general comment No. 35, the Human Rights Committee clarifies the meaning of the terms "arrest" and "detention" and analyses contexts in which arbitrary detention may occur, including criminal justice, immigration detention, mental health and security detention. It provides examples of practices that may amount to arbitrary detention. The Committee also details the obligations of States in relation to the judicial control of detention, in particular the meaning of the right to be promptly brought before a judge, the entitlement to trial within a reasonable time and limitations to pretrial detention. The Committee also provides guidance on how to implement the right for persons deprived of their liberty to take proceedings for release from unlawful detention.

24. In its resolution 20/16, the Human Rights Council requested the Working Group on Arbitrary Detention to prepare draft basic principles and guidelines on remedies and procedures on the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before a court, so that the court might decide without delay on the lawfulness of his or her detention, and order his or her release if the detention was not lawful, with the aim of assisting Member States in fulfilling their obligation to avoid the arbitrary deprivation of liberty in compliance with international human rights law. In 2015, the Working Group adopted the final version of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (see A/HRC/30/37, annex), which are intended to provide States with guidance on fulfilling, in compliance with international law, their obligation to avoid the arbitrary deprivation of liberty.

25. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) were adopted by the General Assembly on

17 December 2015 (see resolution 70/175, annex), following a four-year review process by the Commission on Criminal Justice and Crime Prevention. As a result of the review process, the Nelson Mandela Rules now contain 122 rules that reflect human rights and criminal justice standards. The revision focused on rules pertaining to the respect of the prisoner's inherent dignity; medical and health services; disciplinary actions and sanctions; the investigations of deaths and serious injury in detention as well as signs or allegations of acts of torture or other cruel and inhuman treatment; the protection and special needs of vulnerable groups in detention; the right to legal representation; complaints and independent inspection; and the training of prison staff.

D. Overincarceration

26. With more than 10.2 million people around the world being deprived of their liberty, according to recent statistics,[3] and a significant number of countries in which prisons are overcrowded,[4] the excessive recourse to incarceration remains one of the major challenges in the administration of justice. The human rights impact of overincarceration and overcrowding was examined in detail in a recent report of the United Nations High Commissioner for Human Rights (A/HRC/30/19). In addition, it is important to note that the lack of respect for human rights in the administration of justice also results in overincarceration. An effective criminal justice system with all actors, including police, prosecution, defence and judiciary, working in accordance with the rule of law and international human rights law is necessary to ensure that the rights of all persons who come into contact with this system are protected (see A/HRC/25/60/Add.1, para. 84). Nevertheless, criminal justice systems around the world encounter major challenges and shortcomings.

27. So-called "zero tolerance policies" and "tough-on-crime" approaches adopted in many States have led to a high increase in the number of arrests,[5] even for minor offences,[6] and to people being held in custody for long periods (see A/HRC/19/57/Add.2, para. 38). In addition, some practices, such as overly broad legislation and regulations (see CCPR/C/HND/CO/1, para. 13) and rewards to police for arrests (see CAT/OP/MEX/1, para. 182), have been reported to lead to arbitrary arrests. Such practices have significantly contributed to overincarceration and overcrowding.

28. The excessive use and length of pretrial detention have been identified as major causes of overcrowding.[7] While pretrial detention should be only a last resort

[3] See Roy Walmsley, "World prison population list", 10th ed. (London, International Centre for Prison Studies, 2013).

[4] See International Centre for Prison Studies, "Highest to lowest-occupancy level" (London, 2014).

[5] See Council of Europe document CPT/Inf (2014) 13, para. 37; www.ohchr.org/Documents/Issues/RuleOfLaw/Overincarceration/ACLU.pdf; www.ohchr.org/Documents/Issues/RuleOfLaw/Overincarceration/CNDH_Mexico.pdf; and www.ohchr.org/Documents/Issues/RuleOfLaw/Overincarceration/PDDH_Nicaragua.pdf.

[6] See www.achpr.org/files/sessions/37th/mission-reports/prisons-2004/misrep_specmec_priso_southafrica_2004_eng.pdf, chap. F (i).

[7] See CAT/C/54/2, para. 77; and www.ohchr.org/Documents/Issues/RuleOfLaw/Overincarceration/CNCPPDH_Algeria.pdf.

and subject to certain conditions,[8] in practice it is often applied to minor cases. Pretrial detainees reportedly constitute the majority of the prison population in many countries,[9] in some contexts more than 90 per cent of detainees (see A/HRC/25/71, para. 33). Pretrial detention should be only a measure of last resort.[10] The Human Rights Committee stated that "detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime" (see CCPR/C/GC/35, para. 38). Pretrial detention should therefore not be mandatory and without regard to individual circumstances (see ibid.), and alternatives must be duly taken into account. The time limits imposed must be strictly observed.[11] Furthermore, should the length of pretrial detention reach the length of the longest sentence that could be imposed for the crimes with which the defendant is charged, he or she should be released (see CCPR/C/GC/35, para. 38; and CAT/OP/MLI/1, para. 30). Strict adherence to these international norms and standards will greatly assist in addressing overcrowding and overincarceration.

29. Efficiency in the proceedings following an arrest is crucial to reducing overcrowding and overincarceration. Prolonged pretrial detention is often the result of lost files, a shortage of judges or inadequate investigations. Owing to these deficiencies, the requirement to review the status of detainees at regular intervals is often not complied with (see CAT/OP/BEN/1, para. 160; and CAT/OP/HND/1, para. 184). Moreover, many States lack comprehensive and well-resourced legal aid programmes.

30. Some sentencing policies also contribute to overincarceration and the resulting overcrowding. The proven efficiency and effectiveness of non-custodial alternatives notwithstanding, there is the belief in most jurisdictions that prison is preferable to any alternative (see A/HRC/30/19, para. 38), and harsher penalties in the form of longer prison sentences continue to be imposed. Several international[12] and regional[13] bodies have identified the absence of alternatives to detention or shortcomings in their implementation as a significant contributor to overincarceration and overcrowding.

31. Several specific phenomena have increased the number of criminal convictions with custodial sentences. "Zero-tolerance policies", severe penalties for drug-related offences,[14] mandatory sentences for minor, non-violent offences,[15] excessively

[8] See CAT/C/54/2, para. 84, and Council of Europe document CPT/Inf (2014) 31, para. 56.

[9] See CAT/C/TGO/CO/2, para. 12, and www.ohchr.org/Documents/Issues/RuleOfLaw/Overincarceration/OSJI.pdf.

[10] See articles 9 and 14 of the International Covenant on Civil and Political Rights. See also rules 6.1 and 6.2 of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules); CCPR/C/GC/35, para. 38; and A/HRC/19/57, para. 48.

[11] See www.ohchr.org/Documents/Issues/RuleOfLaw/Overincarceration/LICAMDH_Cameroon.pdf.

[12] See CAT/OP/BRA/1, para. 96; CCPR/C/AGO/CO/1, para. 19; A/HRC/25/60/Add.1, para. 84; and CAT/C/KHM/CO/2, para. 19.

[13] See Council of Europe document CPT/Inf (2014) 29, para. 33.

[14] See A/HRC/10/44, para. 55, and www.ohchr.org/Documents/Issues/RuleOfLaw/Overincarceration/ACLU.pdf.

[15] See A/HRC/25/60/Add.1, para. 99, and www.ohchr.org/Documents/Issues/RuleOfLaw/Overincarceration/PRI.pdf.

lengthy prison sentences, especially life sentences,[16] contrary to the principle of proportionality (see CAT/OP/MDV/1, para. 220), the failure to include time served on remand in sentence calculation (see ibid.) and great limitations to the remission of sentences (see A/HRC/25/60/Add.1, para. 84) have been identified as factors contributing to overincarceration. The lack of discretion for judges when sentencing, including minimum sentencing policies that prevent them from taking into consideration the individual circumstances of the detainee and the case, not only contribute to overincarceration but also are contrary to the principle of independence of the judiciary (see A/HRC/27/48, para. 73).

32. The adequate and independent oversight of places of detention plays an important role in preventing and addressing overincarceration and overcrowding. There are reports that authorities do not know the exact number of detainees held at any given time, or their status, as a result of improper record keeping in places of detention.[17] Many individuals remain in detention owing to the absence of centralized registers and the lack of an effective system to monitor the length of pretrial detention or the implementation of a custodial sentence.[18] Regular and frequent visits to places of detention by prosecutors and judges are also necessary, given that they allow judicial officials to have a proper understanding of the levels of overcrowding and the consequences of overincarceration and to take these factors into consideration when making decisions regarding detention, sentencing or release.

33. Another factor contributing to overincarceration is often the lack of an effective mechanism for persons deprived of their liberty to challenge the legality of their detention. It is essential that the right to challenge one's detention be effective, in particular when there are allegations that individuals may be detained unlawfully or when the pretrial detention limits are not respected or indeed prisoners are not promptly released after serving their sentence.[19] This requires that every detainee be able to take proceedings before an independent court, without substantial delay (see A/HRC/27/47, para. 16), to appear before the court in person and to have the right to legal assistance of his or her choice and access to legal aid.

III. Activities of the United Nations system

34. Promoting and protecting human rights in the administration of justice has been one of the focus areas of the Office of the United Nations High Commissioner for Human Rights (OHCHR) at headquarters and in the field through its country presences, regional offices and human rights components of peace operations and political missions. During the reporting period, OHCHR continued to advocate constitutional and legislative reforms to ensure compliance by States with human

[16] See www.achpr.org/files/sessions/37th/mission-reports/prisons-2004/misrep_specmec_priso_southafrica_2004_eng.pdf, chap. F (i), and www.ohchr.org/Documents/Issues/RuleOfLaw/Overincarceration/PRI.pdf.

[17] See A/HRC/22/53/Add.2, para. 46; and CAT/OP/BEN/1, para. 161.

[18] See *Montero-Aranguren v. Venezuela*, Inter-American Court of Human Rights judgment (2006), para. 60 (9); CAT/C/KHM/CO/2, para. 19.

[19] See CCPR/C/TUR/CO/1, para. 17, and www.ohchr.org/Documents/Issues/RuleOfLaw/Overincarceration/QUNO.pdf.

rights law relevant to the administration of justice, in more than 30 States. For example, OHCHR advised several States, including Grenada, Libya, Ukraine and the United Republic of Tanzania, on the revision of their constitutions. In Kyrgyzstan, further to assistance provided by OHCHR, the parliament adopted seven laws integrating international human rights standards relating to the administration of justice. OHCHR also supported national efforts to adopt a human rights approach in the administration of justice. For example, in Tunisia, in collaboration with the United Nations Development Programme (UNDP), OHCHR supported national authorities in designing a national plan of action to reform the judicial and prison institutions. In Mexico, OHCHR supported local courts to develop fair trial and justice indicators.

35. OHCHR continued to provide advice in relation to protection from torture, in more than 25 countries. In Mauritania, following advice provided by OHCHR, laws criminalizing torture and establishing a national preventive mechanism were adopted. OHCHR also supported the strengthening of such mechanisms, for example in Kazakhstan and Tajikistan. In other contexts, OHCHR provided advice on the use of force by law enforcement officers. For example, it provided analysis and advice for the drafting of a new law on the use of force by police in Peru. It also continued to provide legal and policy advice to 18 States with regard to issues relating to the death penalty.

36. In many countries, OHCHR supported the strengthening of the administration of justice by enhancing the human rights knowledge of members of the judiciary and law enforcement officers. In particular, it conducted or supported training in more than 45 countries. For example, the Human Rights Section of the United Nations Integrated Peacebuilding Office in Guinea-Bissau provided training to magistrates and investigators on a human rights-based approach, while such an approach was integrated into the training of judicial officials in the Plurinational State of Bolivia. OHCHR also regularly continues to train or contribute to training programmes for police officers or prison personnel in many countries, including in Bolivia (Plurinational State of), Myanmar, Tunisia and Uganda. Regarding women's access to justice, OHCHR continued its work on judicial stereotyping, including through capacity-building for the judiciary in Guatemala, Senegal and the United Republic of Tanzania.

37. OHCHR issued a publication, *Human Rights and Traditional Justice Systems in Africa*, in July 2016. Traditional justice systems are widely used in large parts of Africa, but rarely receive the same focus of human rights attention given to the formal judiciary. The publication, developed as the result of the undertaking of extensive research and the holding of a number of expert meetings on the continent, covers the nature and characteristics of traditional justice systems, human rights issues associated with such justice systems and programmatic strategies for future work.

38. OHCHR, as Co-Chair of the Counter-Terrorism Implementation Task Force Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism, contributed to the development of a series of practical basic human rights reference guides. It is also implementing a project on training and capacity-building for law enforcement officials on human rights, the rule of law

and prevention of terrorism, which has included training conducted in Iraq, Jordan and Tunisia.

39. The Global Focal Point on Police, Justice and Corrections Areas in the Rule of Law in Post-conflict and other Crisis Situations was established in 2012 as a platform for the Department of Peacekeeping Operations, UNDP, OHCHR, the United Nations Office on Drugs and Crime (UNODC), the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and other United Nations entities to jointly undertake responsibilities, including through co-location and integrated teams. Joint justice programmes have been or are being developed in the Central African Republic, the Democratic Republic of the Congo, Haiti, Mali and the Sudan (Darfur).

40. UNODC promotes effective, fair, humane and accountable criminal justice systems by supporting Member States in developing and implementing the United Nations standards and norms in crime prevention and criminal justice and other relevant international instruments. Its thematic programme on crime prevention and criminal justice reform supports more than 40 countries worldwide every year, focusing on topics such as the treatment of persons in custody, non-custodial sanctions and restorative justice, justice for children, crime prevention and violence against women, good governance, the independence of the judiciary, the integrity of criminal justice personnel and access to legal aid.

41. To support its technical assistance delivery, UNODC developed several handbooks and other tools, including a handbook on the status and role of prosecutors, a publication on criminal justice responses to violence against migrants, a handbook and training curriculum on women and imprisonment, a handbook on effective prosecution responses to violence against women and girls and training curricula on the treatment of child victims of and witnesses to crime, in addition to handbooks on the management of high-risk prisoners and on dynamic security and prison intelligence.

42. UNODC is stepping up global support and partnerships on priority issues that promote the respect and protection of human rights in the administration of justice. Under its new global programme on addressing global prison challenges, UNODC will support Member States in reducing the scope of imprisonment, strengthening prison management and improving prison conditions and supporting the social reintegration of offenders upon release. Together with the United Nations Children's Fund (UNICEF), the Office launched the Global Programme on Violence against Children in the Field of Crime Prevention and Criminal Justice. Together with UN-Women, the United Nations Population Fund, UNDP and the World Health Organization, UNODC is working towards a joint global programme on essential services for women and girls subject to violence, to provide coordinated responses by police, justice, health and social services.

43. With the political leverage of Security Council mandates, and the ability to deploy large numbers of specialized police, justice and corrections officers, the Department of Peacekeeping Operations continued to strengthen justice and corrections systems in post-conflict environments across up to 15 peace operations during the reporting period. On the basis of the overall objectives of peacekeeping — to advance political solutions, improve security and lay the foundations for institution-

building — justice and corrections components typically engaged in seven priority areas: the basic functioning of the criminal justice system; the investigation and prosecution of atrocity crimes and crimes that fuel conflict; the resolution of disputes over land and other resources; reductions in the level of prolonged and arbitrary detention; the professionalization of justice and corrections personnel; the development and implementation of national justice and corrections reform strategies; and the strengthening of the legislative and regulatory framework. Furthermore, taking into account the political implications of such efforts, and of international human rights norms and standards, the Department sought to reinforce the national ownership of reform in the justice sector.

44. Peacekeeping missions, for example, used their convening authority to coordinate criminal justice frameworks in Mali and helped to reopen courts and prisons in "islands of stability" in the Democratic Republic of the Congo. The mission in Afghanistan established dialogue on land conflict issues, while police components supported national police institutions to maintain law and order and instilled respect for human rights, gender and juvenile justice concerns through training at police academies.

45. UNDP provides rule of law and human rights assistance in more than 100 countries and promotes accessible, effective and accountable justice systems to contribute to good governance, peace and stability. Specifically in crisis-affected contexts and through the Global Focal Point, together with the Department of Peacekeeping Operations, OHCHR, UN-Women and UNODC, UNDP works to ensure the meaningful participation of the most excluded in the justice sector, including by increasing the number of female police officers in Afghanistan and Liberia and supporting community-oriented policing in Pakistan and South Sudan. Similarly, UNDP is consistently engaging in increasing access to justice and the right to timely and fair trial through the use of mobile courts in Somalia and the provision of tailored legal aid for pretrial detainees in Burundi and for victims of sexual and gender-based violence in the Democratic Republic of the Congo and Iraq.

46. UN-Women supports efforts to review discriminatory laws and to provide gender-sensitive justice services to ensure compliance with international obligations regarding women's rights. In Brazil, it supported the adoption of a law criminalizing femicide; in Indonesia, it provided training to High Court judges on human rights and gender equality. UN-Women also supports gender-responsive constitution-making and maintains a public database of gender equality-related provisions contained in 195 constitutions across all regions, which is used in these efforts.

47. In 2015, UN-Women launched a guidebook on general recommendation No. 30 of the Committee on the Elimination of Discrimination against Women and the Security Council resolutions on women and peace and security. It provides information on the content of the general recommendation and those resolutions and includes a checklist of questions for States parties reporting to the Committee, with questions on women's access to justice.

48. UN-Women is a partner in the Global Focal Point arrangement, working alongside partners in crises contexts to provide support to the United Nations country teams, peacekeeping missions, State authorities and civil society to ensure

comprehensive gender mainstreaming in justice and security sector reforms. This work has included joint planning and assessment missions and joint programming in the Central African Republic, Mali, Somalia and the State of Palestine.

49. UNICEF supports Governments and civil society in some 155 countries to implement the Convention on the Rights of the Child and other international standards. Its work to support human rights in the administration of justice includes supporting child rights legislative reform, universal access to birth registration and justice for children. UNICEF also provides technical assistance to Governments to support the inclusion of child rights provisions in constitutions, the development of children's codes and the review of relevant national laws to bring them into line with international standards.

50. In the period from 2012 to 2015, UNICEF strengthened justice systems for children in at least 116 countries, for both children in conflict with the law and children who were victims of and witnesses to crime. Areas of work include increasing children's access to justice, child-sensitive procedures and interviewing, child-friendly police stations and courts with specialized personnel, the promotion of diversion away from judicial proceedings and alternative measures to detention during the entire criminal justice process, and the monitoring of detention conditions for children deprived of their liberty. UNICEF has also worked in partnership with the Department of Peacekeeping Operations on child rights training for peacekeeping forces in predeployment, and with UNODC on programming relating to anti-trafficking and justice for children in countries as diverse as Colombia, Liberia and Viet Nam.

51. Working with the judiciary and the police, and increasingly with the welfare/social sector as part of preventive and rehabilitative efforts, UNICEF invests in capacity-building for national governmental and non-governmental partners by working on training curricula, coordination and data collection.

IV. Developments at the national level

52. A note verbale was sent to States requesting contributions to the present report. The present section is based on summaries of information provided by 17 States.

53. Albania reported that, in an effort to address complaints by prisoners, postboxes had been installed in prisons, offering a confidential way of posting letters of complaint regarding inhumane treatment and abuse by prison staff. Furthermore, prison staff had received human rights training, including on the prevention of torture. The construction and remodelling of detention facilities had been carried out and planned in accordance with international norms and standards.

54. As of 2015, the General Regulations of Prisons in Albania included the preferential treatment of juveniles based on their best interest, with individualized plans of rehabilitation and reintegration. Moreover, detained minors subject to physical, psychological or sexual violence, before or during their stay in an institution, are provided with immediate protective measures, support and legal counselling. In 2015, a study was undertaken to better facilitate the reintegration of juveniles into society and reduce repeat offending.

55. In Bahrain, an amendment of 2012 to the Judicial Authority Act established an independent budget for the Supreme Judicial Council, giving the judiciary complete independence from all other government departments. Since 2012, an annual training programme has trained judges and prosecutors on international human rights standards and criminal justice and the rule of law.

56. Bahrain further reported several amendments to the Criminal Code, in accordance with human rights. The Code of Criminal Procedure has also been amended to, among other things, provide for the protection of witnesses, experts and victims during and after trials and reduce the provisional detention period that lower courts may impose from 45 to 30 days. New laws adopted in 2014 and 2015 provide that every correctional and rehabilitation institute should have a medical clinic providing comprehensive free health care for inmates, together with a social worker specialized in psychology and sociology.

57. To promote justice for juveniles, a new bill is due to increase the legal minimum age of criminal responsibility from 15 to 18 years. National law enforcement agencies have developed a comprehensive plan to train officers on human rights and the rule of law. The Ministry of the Interior has approved a code of conduct for law enforcement officials that is based on the United Nations Code of Conduct for Law Enforcement Officials. Furthermore, the police academy curriculum discusses concepts of human rights in law enforcement. A special investigation unit has been established to investigate allegations of torture and abuse. An ombudsman's office established at the Ministry of the Interior has received, investigated and addressed complaints of misconduct by Ministry employees. Also since 2012, the Office of the Inspector General of the National Security Agency receives and reviews complaints within the Agency.

58. Ecuador provided information on ways in which the Constitutional Court has improved access to justice, in particular through efforts to decentralize its work through regional offices and the use of videoconferencing technology and dissemination workshops. This has allowed several thousand individuals to gain access to constitutional jurisdictions without having to travel to the capital. The Criminal Code now includes violence against women and domestic violence as crimes. In 2015, a directive was issued, specifying that the Public Defender Service was to ensure free and continuing assistance in places of detention to persons deprived of their liberty, their families and third parties visiting the place of detention.

59. El Salvador has adopted reforms to the Criminal Code to allow for aggravating circumstances to be considered when crimes of threat and murder are committed for reasons of hatred for sexual orientation, identity and gender expression of the victim. The first specialized court addressing violence and discrimination against women has been created in the capital. El Salvador also reported developments facilitating access to justice, such as modifying the Code of Criminal Procedure to allow remote hearings through videoconferencing technology as well as the implementation of so-called Gesell chambers, to exclude contacts between minor victims of crimes and the accused.

60. Italy reported the passage of a law amending the Code of Criminal Procedure and the Penitentiary Act, providing that, among other things, precautionary

measures such as pretrial detention are permissible only when the risk of absconding or of crime recurrence is "current and concrete"; an order for pretrial detention must be accompanied by justification for the inadequacy of house arrest and electronic tags; and the right of inmates to receive visitors has been extended to allow visitation with their child with a serious disability. Italy further reported the recent establishment of a national ombudsman on the rights of persons detained or deprived of personal liberty, a protection and monitoring mechanism. Functions of the body include monitoring, visitation of facilities, oversight, auditing and reporting.

61. In Jamaica, a justice reform implementation unit was created in 2012. It coordinates and supports reform initiatives that aim to ensure speedy and fair trials. A restorative justice programme was introduced as an alternative to traditional adjudication and to reduce backlog by diverting cases from the formal justice system and resolving conflicts at the community level. Moreover, non-custodial sentences, probation and community service are increasingly being used to stem overcrowding in prison and detention facilities. The Government is also actively pursuing the establishment of a national human rights institution.

62. Human rights training is provided for all new recruits to the Jamaica Constabulary Force, and a new diversity policy guides police conduct in dealing with particular groups, such as lesbian, gay, bisexual and transgender persons. Furthermore, a new administrative policy of the Force addresses issues relating to vulnerable groups. In addition, in an effort to reduce the use of lethal weapons by law enforcement, kits of less lethal weapons and restraints have been acquired.

63. Kazakhstan reported that the Supreme Court had put significant efforts into modernizing the justice system and developing effective administration of justice, with the goal of simplifying access to justice, forming a new judiciary, ensuring effective legal proceedings and increasing the degree of confidence in the justice system.

64. On 1 January 2015, a new criminal code, code of criminal procedure and penitentiary code entered into force, ensuring better compliance by the judicial system of Kazakhstan with the international instruments on human rights. For example, criminal liability has been increased for acts of torture that result in grave harm to the health, or the death, of the victim; life imprisonment is not imposed on persons who have committed crimes at an age younger than 18 years, nor on women, nor on men older than 63 years. Rules on parole have also been modified: the group of people eligible for parole has been widened and milder conditions for vulnerable groups are provided for.

65. An institute of investigative judges was introduced in 2015, with the aim of ensuring the prevention of unfounded restrictions of constitutional rights and freedoms. The jurisdiction of investigative judges has been extended to the authorization of seizure, search, body search and inspection. Moreover, this reform entails the wider application of preventive measures such as bail, house arrest, restricted residence, supervision of a convicted minor and personal guarantee. On 18 February 2016, an academy of justice was established, aimed at training judiciary officials and improving their educational and professional skills, including on issues relating to gender and the protection of children.

66. Mexico provided details about the work of the Council of the Federal Judiciary to reinforce the protection of human rights. For example, the Council published a series of "protocols", or reference tools, to support and guide judges in the application of international human rights standards: judging with a gender perspective; matters involving the rights of indigenous persons, communities and peoples; matters affecting migrants and asylum seekers; cases affecting girls, boys and teenagers; matters involving the rights of persons with disabilities; cases involving sexual orientation or gender identity; and matters involving acts constituting torture and ill-treatment. The Council also organized workshops on judging with a gender perspective and published a notebook on the best practices in this area. Mexico reported on the work of the Supreme Court to promote and disseminate human rights, through, among other things, the creation of an advanced search engine on human rights, referring to national, regional and international practice.

67. Mexico also reported the gradual implementation of a new criminal justice system, which enshrines the principles of presumption of innocence and equality of the parties and seeks to ensure due process, access to justice and protection of victims. It also accords priority to reparations and a new rationale for the implementation of sanctions. In this context, the National Code of Criminal Procedure was published in March 2014.

68. Paraguay provided information on the role of public defenders in the protection of persons deprived of their liberty. The Public Defender Service issued resolutions with the goal of increasing the use by public defenders of international human rights law instruments. Public defenders have the power and responsibility to conduct prison visits in order to obtain information on the legal situation of persons deprived of their liberty and on their conditions and treatment in detention, and initiate complaint proceedings on their behalf. In the area of juvenile justice, a manual on criminal procedures applies a form of criminal procedure for juveniles that is different to that applicable to adults, in conformity with international instruments. The Service also worked on issues linked to access to justice for women, indigenous peoples and older persons through the formulation of policies and training and workshops.

69. In the Republic of Moldova, Act No. 138, adopted in 2015, provides for the appointment in each probation office of a probation counsellor specialized in juvenile probation. A recently adopted law, amending and supplementing previous acts, allows for fewer arrests of juveniles in situations in which re-education is possible. In 2014, the Ministry of Justice created an independent internal disciplinary mechanism to address detainee complaints of torture and other ill-treatment. To improve surveillance and increase the accountability of prison personnel, cameras were installed in penitentiaries.

70. Qatar reported amending its law by adding a clear definition of torture in line with the definition contained in the Convention against Torture. Law enforcement officials receive training on the legal framework guiding their work, including on the prevention of torture. New judicial officers, including lawyers and prosecutors, attend training in human rights in the course of their mandatory legal training.

71. In Romania, the new Criminal Code and Code of Criminal Procedure provide for alternative measures to imprisonment, including the increased usage of fines and house arrest, with the aim of preventing the overcrowding of prisons. As of 2014, pregnant women and women with a child up to 1 year of age in their care are exempt from the maximum security regime, and detained mothers have the possibility of taking care of their child up to the age of 1 year. The same law provides for women and young offenders to have access to education and psychological and social assistance, as needed. A law adopted in 2015 provides for special conditions for detained minors, including education centres.

72. The Romanian National Institute of Magistracy, in collaboration with the National Council for Combating Discrimination, conducts continuing training and seminars on the right to equality and non-discrimination, which are aimed at helping judges and prosecutors to combat discrimination. The Institute provides another continuing training project on equal access to justice for Roma.

73. The Russian Federation reported the adoption in 2013 and amendment in 2016, by the plenary of the Supreme Court, of Regulation No. 41, relating to the practical modalities of the implementation of the law on security measures, detention, house arrest and bail. It provides details for the implementation of the right to liberty and security that are guaranteed by the Constitution. In 2016, the Supreme Court prepared a synthesis of the practice and legal interpretation of the European Court for Human Rights in relation to article 5, paragraph 3, of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in order to improve the interpretation of Russian legislation regarding the right of the accused to a trial within a reasonable time and the right to appeal against decisions relating to security measures. Recent developments in international law related to the administration of justice were made available to judges of the Supreme Court and other jurisdictions through a database containing a section on international law, which includes the Nelson Mandela Rules, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) and several United Nations documents pertaining to juvenile justice.

74. Saudi Arabia provided information on legal provisions protecting the right to fair trial. Specific provisions for the protection of children in the administration of justice were highlighted. Several measures have been developed to support the growth of a child in a healthy and safe environment, such as support for training relevant personnel in child abuse cases, such as judges, police officers, doctors and specialists. Programmes for the rehabilitation and reintegration of children previously involved in activities relating to terrorism have been instituted. A special status in the administration of justice is accorded to women, such as the right to choose the jurisdiction in which to pursue claims and providing women with various forms of judicial support.

75. Slovenia reported on plans to implement Directive 2012/29/EU of the European Parliament, which establishes minimum standards on the rights, support and protection of victims of crime. Slovenia also reported on measures in place to protect juveniles, including the use of safe rooms and audio/videoconferencing to conduct interviews.

76. In 2015, the Spanish Code of Criminal Procedure was the subject of a comprehensive reform with the aim of strengthening the procedural safeguards of detainees. The revised Code states explicitly that the rights of the defence apply from the moment when a person is notified of being suspected of a punishable act, is detained or is the object of other security measures and apply until the completion of a sentence. The revised Code also provides guarantees in relation to persons deprived of their liberty, providing in particular that arrests and detentions are to be carried out in the manner least harmful to the individual, and establishes limits on the length of preventive detention. It also provides a framework for incommunicado detention, limited to exceptional cases in which there is an urgent need to protect life, liberty or physical integrity or upon the request of the investigative judge so as to avoid severely jeopardizing the investigation. This measure can be imposed only by the decision of a judge, for a maximum duration of five days, is subject to two daily medical examinations and cannot be imposed on detainees under 16 years of age.

77. The revised Code of Criminal Procedure provides specific safeguards to reinforce the protection of the rights of juveniles in the justice system. It specifies that, if the detainee is a minor, the juvenile units of the prosecution and the guardians of the detainee are to be informed of the reason for and the place of detention.

78. In the Sudan, the Ministry of Justice issued Decree No. 47/2015 to create a committee to review laws, including the Criminal Act (1991). By Presidential Decree No. 489/2014, a centre for judicial and legal studies was created to train judicial and law enforcement personnel. In the two years since its creation, training has covered such topics as criminal justice, juvenile justice and governance.

79. The Sudan also reported that a coordinating council for human rights had been established for the purposes of human rights education for law enforcement personnel. It has organized workshops, in cooperation with UNDP, to train judges, prosecutors, lawyers and police on international human rights standards for the right to a fair trial.

V. Conclusions

80. The developments, challenges and good practices highlighted in the present report indicate the essential role of international human rights norms and standards in ensuring a fair and transparent system of the administration of justice. States should pay particular attention to access to justice, including for women, children and migrants, the rights of persons deprived of their liberty and legal aid. To give the related norms and standards full effect, States must, when applying them, take into account the interpretation and conclusions of human rights treaty bodies and special procedures. These bodies also play an important role in the effective oversight of the implementation of relevant human rights law instruments.

81. The excessive recourse to incarceration and the resulting overcrowding of places of detention remain a main, and concerning, human rights challenge in the administration of justice. This challenge must be addressed and urgent and

sustained efforts deployed to strengthen the implementation of the relevant human rights norms and standards, and criminal justice policies that contribute to these phenomena must be reviewed accordingly. Particular attention should be given to ensuring that the right of detainees to challenge detention is fully respected, using pretrial detention only as a last resort, developing and implementing, including by legislative measures, alternatives to custodial measures, during pretrial and post-conviction and reviewing criminal policies and legislation to ensure proportionate sentencing.

82. **During the reporting period, United Nations entities continued to assist States in the development of norms and standards regarding human rights in the administration of justice, as well as in their implementation at the national level, in particular through the provision of technical assistance and advocacy.**

83. **As highlighted in States' submissions, in addition to training and other capacity-building measures, the continuous review of compliance of legislation with the obligations of States under international human rights law is an indispensable requirement for a human rights-compliant system of administration of justice.**